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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

1998 Biennial Regulatory Review --
Streamlining of Radio Technical Rules in
Parts 73 and 74 of the Commission's Rules

MM Docket No. 98-93

**NOTICE OF PROPOSED RULE MAKING
AND ORDER**

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By the Commission: Commissioner Furchtgott-Roth issuing a statement.

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I. Introduction

1. This *Notice of Proposed Rulemaking and Order* continues the Commission's broad-based initiative to streamline Mass Media Bureau rules, policies and licensing procedures. This proceeding, which is undertaken in conjunction with our 1998 biennial review, is closely tied in goal and philosophy to a number of outstanding rulemakings. These include the recently released *Notice of Proposed*

Rulemaking to streamline mass media applications, non-technical rules and processes,¹ the planned expansion of electronic filing capabilities, the forthcoming introduction of automated call sign procedures and numerous staff initiated reforms.² These pending proceedings seek comment on ways to speed the introduction of new and improved broadcast services to the public, provide greater flexibility to broadcasters to improve existing services, and reduce regulatory burdens on applicants.

2. The central focus of this proceeding is the FM technical requirements codified in Parts 73 and 74 of the Commission's rules. This *Notice* seeks comment on proposals that would change fundamentally the way the Commission evaluates proposals that would create interference in the FM band. It also seeks comment on whether the contingent application rule should be modified to permit coordinated facility modifications among broadcasters. It proposes a signal propagation methodology that more accurately takes into account terrain effects to better predict where interference would *not* occur; adoption of this methodology would permit certain applicants to obtain greater service improvements. The *Notice* tentatively concludes that the Commission should adopt numerous other changes in our commercial and noncommercial educational ("NCE") FM technical rules to promote greater technical flexibility. It also identifies various changes that may be possible in the technical processing rules, including proposals to expand the definition of "minor" changes and the use of more efficient first come/first served filing procedures, to streamline and expedite the processing of applications to modify existing facilities in several services. Finally, this *Notice* includes an *Order* adopting minor changes to certain technical rules.

II. Negotiated Interference in the FM Service

A. Introduction

3. Increasing congestion in both the reserved and non-reserved portions of the FM band limit options for operating stations to relocate to better transmitter sites and reach additional listeners. Some broadcasters have urged the Commission to permit "negotiated interference" agreements to enhance technical flexibility. In general, the concept "negotiated interference" signifies to many a technical paradigm under which licensees take greater or principal responsibility for determining acceptable levels and areas of interference. In fact, the different kinds of facility modifications that could fall under the rubric of "negotiated interference" can raise substantially different and sometimes difficult technical and policy concerns. Negotiated interference agreements may, but need not, involve facility changes to more than one station. "Negotiated" proposal(s) may, or may not, eliminate interference, create new interference, shift areas of interference, and/or result in the withdrawal or abandonment of service within a station's protected service area. They may, or may not, involve taking a station off the air and cancelling a station license. They may, or may not, involve contingent applications. The breadth of the concept is underscored by the fact that the Commission has both explicitly rejected negotiated interference

¹ *Notice of Proposed Rulemaking, 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes*, FCC 98-57 (released April 3, 1998).

² Staff initiatives include fast-track processing of complete and grantable FM modification applications, new DTV license certification procedures, the introduction of computer generated authorizations for AM stations, and the creation of teams and *ad hoc* working groups to expedite the review of settlement agreements among mutually exclusive broadcast applications, to process immediately certain curative amendments for AM and FM modification applications, and to grant rapidly applications to permit silent stations to resume operations.

agreements³ and codified procedures to permit certain short-spaced station to undertake mutual facility improvements by agreement.⁴ In this *Notice* we seek comment on various "negotiated interference" models, and whether these models would enhance broadcasters' flexibility to relocate transmission facilities and serve desired markets, consistent with our core obligation to preserve the technical integrity of the FM band. We also seek comment on those procedures and policies that may unduly impede the coordinated efforts of broadcasters to improve service.

B. Background

4. The Commission has frequently used the term "negotiated interference" to describe agreements between or among stations to accept new or increased interference within their protected service contours,⁵ typically in connection with proposals to expand service by one or several stations. The Commission has generally rejected attempts by applicants to negotiate interference levels on a case-by-case basis, holding that the selection of interference standards is a non-delegable Commission responsibility. Although the Commission drew a sharp distinction between the private interests of broadcasters and the public interest, in a 1961 discussion of negotiated interference rights between AM broadcasters, it also acknowledged that the "acquiescence" of affected station(s) is a factor that the Commission may take into account:

The allocation of stations *always* invokes the public interest. The acquiescence of existing stations cannot preclude an effective supervision over station distribution. Indeed, the fact that AM allocation is on a case-by-case basis makes it all the more important that the Commission not be hampered by private agreements or apathy. Failure to claim protection for imperiled service areas may buttress a conclusion otherwise reached that the public interest, which is the touchstone of the Commission's actions, will not suffer but is not in itself controlling. (citation omitted). In certain instances it is obvious that stations must be rescued from their own folly in failing to recognize the seriousness of a diminution of service areas threatening their survival or even, through loss of profits, their ability to render meritorious program service.⁶

5. Subsequently, in a comprehensive review of AM technical broadcasting principles, the Commission again considered whether it should permit affected stations to resolve interference issues through private negotiations.⁷ Fourteen commenters addressed the question of negotiated interference rights. Of these, nine opposed the concept, expressing concern that such an approach would lead to further degradation of the AM service, contrary to the stated intent of the *Notice of Inquiry*. Five

³ See, e.g., *Board of Education of the City of Atlanta (WABE-FM)*, 11 FCC Rcd 7763, 7766-67 (1996); *Educational Information Corporation (WCPE(FM))*, 12 FCC Rcd 6917, 6920-21 (1997).

⁴ See, e.g., 47 C.F.R. § 73.213(c)(2), which provides for mutual facility improvements by pairs of grandfathered short-spaced Class A stations.

⁵ The protected service contour of an FM station depends on its class. Class B stations are protected to their 54 dBu contour, Class B1 stations to their 57 dBu contour, and all other class stations to their 60 dBu contour.

⁶ *Mountain Empire Radio Co.*, 30 FCC 739, 743 (1961) (emphasis added).

⁷ See *Review of Technical Assignment Criteria for the AM Broadcast Service, Notice of Inquiry*, 2 FCC Rcd 5014 (1987).

commenters favored permitting private interference negotiations, stating, among other reasons, that this policy: (1) would make it possible for some licensees to reduce interference received within their protected service contours; (2) would be particularly helpful where "grandfathered interference rights" have created a level of interference beyond that permitted by the agency's protection standards; and (3) could facilitate new service to underserved areas if the Commission would accept increased interference to other areas. Ultimately, the Commission declined to adopt policies to permit agreement to increase interference.

6. This proceeding eventually led to the adoption of various policies to promote interference reduction strategies in the AM band.⁸ The Commission modified the contingent application rule to permit the processing of related applications filed pursuant to interference reduction agreements⁹ and its AM processing rules to narrowly limit the filing of competing, mutually exclusive proposals. The Commission also endorsed procedures to permit the deletion of interfering AM facilities provided that an adequate service floor would be maintained in the community losing a local transmission service.

7. The Commission's treatment of interference agreements between FM stations is similar. In 1991, the Commission again found that the "selection of interference standards is properly a function of the Commission" and that voluntary acceptance of interference could preclude future changes by the affected station(s).¹⁰ In response to an application for a new NCE FM station in Chicago, Illinois, the Commission concluded that applicants should not be allowed to negotiate interference.¹¹ Similarly, the Commission reiterated in *Board of Education of the City of Atlanta (WABE-FM)* its concern that negotiated interference agreements could undermine Section 307(b) of the Communications Act by compromising service to rural areas and permitting the inefficient use of the spectrum.¹²

8. Nonetheless, the Commission has, in certain circumstances, recognized the value of permitting FM broadcasters to resolve interference issues among themselves and amended its rules to facilitate implementation of such agreements. Prior to the recent adoption of a *Report and Order* that eliminated the requirement to obtain the consent of the affected station,¹³ those pairs of stations that have remained short-spaced since 1964, when the Section 73.207 minimum separation requirements were adopted, could seek service improvements provided that they entered into an agreement for this purpose

⁸ *Policies to Encourage Interference Reduction Between AM Broadcast Stations, Report and Order*, 5 FCC Rcd 4492 (1990).

⁹ See 47 C.F.R. § 73.3517(c). As explained in para. 11, *infra*, the contingent application rule prohibits the filing of an application that cannot be granted until a second, pending application is granted.

¹⁰ See *Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas*, 6 FCC Rcd 5356, 5362 (1991).

¹¹ *Open Media Corporation*, 8 FCC Rcd 4070, 4071 (1993).

¹² 11 FCC Rcd at 7766-67; see also *Educational Information Corporation, WCPE (FM)*, 12 FCC Rcd at 6920-21.

¹³ *Grandfathered Short-Spaced FM Stations*, 12 FCC Rcd 11840 (1997). Former Section 73.213(a) barred stations from extending their 1 mV/m contour toward any other pre-1964 grandfathered short-spaced station. The *Order* amends Section 73.213(a) to eliminate the former Section 73.213(a) restriction on extending the 1 mV/m contour of pre-1964 grandfathered short-spaced stations. It also eliminates the requirement that the affected stations agree to the extension of the other station's 1 mV/m contour toward it.

and made a public interest showing.¹⁴ The Commission stated with regard to such pre-1964 short-spaced stations that it would take into account: (1) the additional areas and populations that would receive new primary service; (2) the extent of the resulting interference; and (3) the availability of other aural services in these areas.¹⁵ In adopting this policy, the Commission balanced improved service against the possibility of increased interference -- given that interference *already existed* due to the grandfathered short-spacing. Applicants also were required to demonstrate that the public would not be deprived of broadcast service.

9. The Commission also addressed the concept of FM negotiated interference agreements in 1989, when it decided that it would permit upgrades in the facilities of those Class A stations that became short-spaced on October 2, 1989. This class of grandfathered short-spaced stations was created pursuant to the Commission's action increasing maximum authorized effective radiated power for Class A stations from 3 to 6 kilowatts ("kW") and Section 73.207 minimum spacing requirements.¹⁶ Short-spaced Class A stations in this category were allowed to improve their facilities up to Class A maximums provided that a suitable agreement was reached between the short-spaced stations and a copy of the agreement was submitted to the Commission with the construction permit applications.¹⁷

10. Several key points emerge from the Commission's prior consideration of negotiated interference in the AM and FM services. First, it concluded that the public interest would be served by modifying the contingent application rule and AM cut-off procedures to facilitate coordinated technical changes between AM stations. Second, with the exception of certain grandfathered short-spaced stations, no parallel changes have been adopted for FM applications. Thus, the Commission has condoned the use of agreements to promote service improvements in the technically more difficult AM service as well as agreements between commercial FM stations that operate, axiomatically, at spacings substantially less than current new station requirements while consistently rejecting the use of these same agreements between fully spaced FM stations where interference concerns would generally be less. In short, current Commission policy provides the least flexibility for technical facility improvements in mid-sized major markets where FM broadcasters face the greatest technical constraints to undertake such improvements. Third, the Commission has drawn a sharp distinction between those proposals that would result in new or increased interference and those that would not. We consider each of these issues in turn.

C. Specific Proposals

1. Agreements Involving Applications for Coordinated FM Station Changes

11. *Background.* Section 73.3517 prohibits the filing of contingent applications in the FM

¹⁴ See "Commission Reaffirms Policy With Respect to Agreements Between Short-Spaced FM Stations," *Public Notice*, 57 FCC 2d 1263 (1975).

¹⁵ *Id.* at 1263-64.

¹⁶ See *Notice of Proposed Rule Making* in MM Docket No. 88-375, 3 FCC Rcd 5941 (1988); *First Report and Order*, 4 FCC Rcd 2792 (1989); *Second Report and Order*, 4 FCC Rcd 6375 (1989); *recon. and clarification granted in part*, 6 FCC Rcd 3417 (1991).

¹⁷ *Second Report and Order*, 4 FCC Rcd 6375, at para. 52; *recon. denied in part and granted in part*, 6 FCC Rcd 3417, at paras. 14-20, 23-24.

broadcast services.¹⁸ An application is contingent when it cannot be granted until a second application also pending before the Commission is granted. When an FM technical proposal is contingent on a second technical proposal, the first application remains contingent until the second facility is constructed and a covering license issued.¹⁹ For example, where Station A is granted a construction permit to relocate its licensed facilities to another site, any subsequently filed application must protect Station A's licensed and permitted facilities.²⁰ In these circumstances, Section 73.3517 precludes the filing of a Station B application that protects the Station A construction permit but not the Station A license. Only after the Commission grants a license to cover the Station A construction permit can Station B file its construction permit application. These procedures protect Station A's ability to continue operations with its initially licensed facilities in the event it did not, for any reason, complete the authorized facility modifications.

12. As noted above, the Commission permits the filing of contingent applications to facilitate interference reduction and service improvements by either separately or commonly owned AM stations. In contrast, the Commission has rejected similar requests from FM stations that have entered into agreements that propose "coordinated" or "interrelated" facility relocations, modifications, and "one-step" upgrades and downgrades.²¹ The Commission has been generally unwilling to waive Section 73.3517 on the basis of FM "service improvements." It has also been concerned with the preclusive impact of such proposals. The grant of a covering license for a station to operate on a lower class and/or from a different site may create the opportunity to file a petition for rulemaking for a new station allotment.²² However, the acceptance of a contingent one-step upgrade application could effectively preclude the opportunity for a third party to file a rulemaking petition for a generally preferred new allotment tied to the coordinated downgrade. The one-step processing rules do not contemplate the filing of impermissible contingent one-step applications as a means of foreclosing other allotment proposals.

¹⁸ The rule does not differentiate between major and minor changes. *Amendment of Sections 1.517 and 1.520*, 61 FCC 2d 38 (1976). Moreover, it has been longstanding staff practice to apply 47 C.F.R. § 73.3517 to minor change and major change applications for new stations.

¹⁹ See *Contingent Applications in the Broadcast Services*, 22 Rad. Reg. 299, 299 (1961); see also, *Seattle Public Schools*, 103 FCC 2d 862, 864 (1986).

²⁰ See 47 C.F.R. § 73.208, which requires applicants to protect all outstanding authorizations.

²¹ The commercial FM "one-step" processing rules were designed to facilitate improvements by eliminating the necessity for a petition for rulemaking in instances where licensees seek upgrades on adjacent and co-channels, modifications to adjacent channels of the same class, and downgrades to adjacent channel. One-step applications are processed as minor change applications. See *Amendment to the Commission's Rules to Permit FM Channel and Class Modifications by Application, Report and Order*, 8 FCC Rcd 4735 (1993).

²² We take this opportunity to clarify the consequences of the grant of a one-step FM commercial station application to change channel or station class. Such a grant amends the table of allotments and modifies that station license to operate on the new channel and/or class. See *Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application, Report and Order*, 8 FCC Rcd 4735 (1993). During the construction permit period, the licensee may continue to operate the previously authorized facilities on an interim or "implied Special Temporary Authority" basis. However, in contrast to our treatment of routine minor modification applications under Section 73.208, the formerly authorized facilities are no longer protected from subsequently filed applications. If the permittee fails to timely construct and lets its permit lapse, the permittee is not relieved of the obligation to change to the channel and class specified in the amended Table of Allotments. A new one-step application revising the prior modification would be required in order to return to the former allotment. This filing would be subject to the first-come, first-served processing rule for minor modifications.

13. *Discussion.* We propose to allow the filing of contingent minor change FM construction applications on a limited basis. We would require that such applications be filed on the same date, and that each include a copy of the agreement covering all related applications.²³ These related minor change applications would be processed and if grantable, granted simultaneously. The construction permits would be conditioned as necessary to allow an orderly implementation of non-interfering service. If any application in the group could not be approved, we propose to dismiss all applications filed as an interrelated group. We would reject any coordinated agreement that, in our determination, would not serve the public interest. We seek comment on each aspect of this proposal.

14. We also propose to permit the filing of contingent proposals that include one-step upgrade and downgrade applications. We seek comment on whether this change is consistent with the rationale underlying the one-step policy. The "opportunity" for filing competing proposals in this context is wholly dependent on two stations reaching agreement on the coordinated facility changes. However, stations are reluctant to pursue coordinated facility changes where there is a possibility that a competing application could be filed. We tentatively conclude that in these circumstances the preclusion of competing allotment and minor change proposals is consistent with the public interest. We seek comment on this conclusion and whether the proposed procedures are consistent with Section 307(b) of the Act.

15. We tentatively conclude that contingent applications should be limited to four related, simultaneously filed applications. Permitting contingent proposals could result in an increase in the number and complexity of facility application filings. Limited staff resources and the need to continue to perform other equally important tasks in a timely manner support capping the number of related contingent proposals that could be filed. We seek comment on this limitation and whether a different policy should apply where some or all proposals involve stations under common ownership.

16. We propose additional requirements when the coordinated changes include cancelling an NCE FM station license. In 1990, the Commission decided against establishing a specific local transmission service floor with respect to our public interest evaluation of contingent arrangements that propose to terminate AM facilities.²⁴ Instead we adopted guidelines that permit case-by-case evaluation of such applications. Similar service improvement opportunities exist for NCE FM stations, but not for commercial FM stations because Section 73.208 requires commercial applications to protect vacant allotments. We tentatively conclude that the AM interference reduction principles should apply to NCE FM agreements proposing the cancellation of a NCE FM station license. Thus, proposals could not create white or gray areas.²⁵ In addition, agreements to terminate a community's only local transmission service would be considered on a case-by-case basis and would take into account the availability of other services and the possibility of restoring local service with either an AM or FM station. We seek comment on whether to establish a "local service floor" to ensure that the granting of contingent applications does not result in a loss of service that would be detrimental to the public interest.

²³ FM commercial minor change applications are "cut off" as of the date of filing, that is protected from later filed conflicting construction permit applications. See discussion *infra* at para. 46 regarding our proposal to extend this process to minor change applications for NCE FM educational stations.

²⁴ See *In the Matter of Policies to Encourage Interference Reduction Between AM Broadcast Stations*, 5 FCC Rcd at 4494.

²⁵ A "white" area receives no full-time aural service, a "gray" area receives one full-time aural service. We note that case law suggests that the Commission is precluded from allowing the creation of any white or gray areas. See, e.g., *West Michigan Television v. FCC*, 460 F.2d 883 (D.C. Cir. 1971).

2. Agreements Involving Applications That Would Cause New or Increased Interference

17. *Background.* As explained above, the Commission has been extremely reluctant to permit the creation of interference within a station's protected service contour, particularly where none currently exists. We have been concerned that this policy would lead to further clustering of stations in urban areas in contravention of Section 307(b) of the Act. We also have opposed such proposals on spectrum efficiency grounds and because grant of interference-creating applications could effectively foreclose facility improvements by stations receiving new interference. Moreover, creating areas of co-channel and first adjacent channel interference could result in an overall loss of available signals to affected listeners. Thus, the Commission has consistently maintained that any increase in total caused or received interference is contrary to the public interest.²⁶ Exceptions to this approach have been grounded on narrow technical or policy considerations.

18. Notwithstanding the Commission's long-standing resistance to negotiated interference, we believe that this technical streamlining initiative provides an opportunity to reconsider our policy options in the context of the technically simpler NCE FM and commercial FM services. We remain cognizant of our obligation to reevaluate regulatory standards over time and to modify policies in response to changes in the broadcast industry.²⁷ Radio is truly a mature service. Over 10,000 commercial AM and FM stations and nearly 2,000 NCE FM stations compete for listeners. Virtually all major and mid-sized markets, where we anticipate the greatest level of interest in negotiated interference agreements, receive service from five or more radio stations, our traditional measure of a well-served area.²⁸ Opportunities for new full service or substantial facility improvements in these markets are extremely limited. Congestion in the FM band provides a major technical impediment to the further "urban clustering" of stations. Moreover, a station's core obligation to serve its community of license will continue to limit transmitter relocations and service area modifications. As a result, measures designed to give broadcasters additional flexibility may raise lesser concerns at this time regarding the "fair, efficient, and equitable distribution of radio service" ²⁹

19. There are additional reasons to reconsider these policies at this time. The financial and management sophistication of the radio broadcast industry has grown dramatically in recent years, spurred by fundamental changes in local ownership and the elimination of national ownership restrictions. Moreover, both Congress and the Commission are committed to relying to the greatest extent possible on competitive communications markets rather than resource-intensive regulatory policies to safeguard the public interest. The idea that the Commission must stand ready to protect stations "from their own [economic] folly"³⁰ may not reflect either the realities of the radio industry or the Commission's current regulatory paradigm. In this environment we seek comment on whether it is possible to provide

²⁶ Interference caused occurs when one station extends its interfering contour to overlap the protected service contour of a second station. Interference received occurs when one station extends its protected service contour to overlap the interfering contour of a second station.

²⁷ E.g., *Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413, 1425 (1983).

²⁸ See, e.g., *Table of Allotments, FM Broadcast Stations, Bay City, Texas*, 10 FCC 2d 3337 (1995) (stating the Commission considers areas receiving at least five aural services to be adequate service).

²⁹ 47 U.S.C. § 307(b).

³⁰ *Mountain Empire Radio Co.*, 30 FCC at 743.

broadcasters some additional flexibility under our technical rules to expand service while at the same time establishing requirements to ensure that negotiated interference agreements are limited to situations where service gains would outweigh service losses and the creation of new and/or expanded areas of interference.

20. *Discussion.* Section 73.509 establishes contour protection standards for all NCE FM stations and generally prohibits the overlap of the interfering contour of the station and the protected contour of a second station. Section 73.215(a) establishes contour protection standards for commercial FM stations that do not satisfy the minimum distance separation requirements at Section 73.207. A station becomes a Section 73.215 station with respect to a second station upon grant of an application requesting processing under this rule. The applicant must demonstrate no prohibited overlap of protected and interfering contours in accordance with Section 73.215(a) and meet the less stringent separation requirements of Section 73.215(e) with respect to such second station. We seek comment on whether we should amend Sections 73.215(a) and 73.509 to permit applications that would result in prohibited overlap, and therefore, interference,³¹ based on the following four criteria:

(1) Total interference received by any station from all interfering stations must be no greater than five percent of the area and population within each affected station's protected service contour;

(2) Total service gain must be at least five times as great as the increase in total interference, in terms of both area and population. Service gain is defined as the difference between the current service contour area and population, and the proposed service contour area and population. Total service gain is the sum of all service gains for all stations included in the agreement. Interference increase is defined as the difference between the current interference area and population, and the proposed interference area and population. Total interference is the sum of all interference increases and decreases received by all affected stations and applicants, in terms of area and population. Interference calculations would include interference received by a proposal even if it occurs beyond that station's current service contour. If interference calculations made in accordance with this criterion establish that total interference would be decreased, an applicant would be exempt from any service gain requirement;

(3) No predicted interference can occur within the boundaries of any affected station's community of license; and

(4) Any application causing or receiving interference in an area that previously received interference-free service would be required to demonstrate the existence of at least five remaining aural services within each interference area.

We request comment on each of these factors, including whether the interference cap and gain/loss ratio strike an appropriate public interest balance. Should the Commission adopt additional or fewer restrictions? Should the Commission adopt separate service floor requirements for commercial and NCE FM stations?

21. If a rule change is adopted, applicants would be required to file coordinated facility modifications on the same date and clearly cross-reference all associated applications. A copy of the written consent of all stations receiving interference within their protected service contour as a result of

³¹ As explained in paragraph 23, *infra*, predicted interference would occur only in a portion of the overlap area.

proposed facility modification(s) would be submitted with the applications. Under this approach, we would propose to amend Form 301 to require applicants to certify compliance with these negotiated interference standards and to submit supporting materials in exhibit form. We believe that careful review of interference creating proposals filed pursuant to novel procedures would be particularly warranted. We seek comment on this conclusion and whether the Commission should rely on applicant certifications without supporting exhibits. All non-reserved band applications would be required to satisfy the less stringent Section 73.215(e) spacing requirements and all construction permits granted to FM non-reserved band applicants would be granted as Section 73.215 proposals. In addition, we would propose to amend Section 73.509 to prohibit second and third-adjacent channel NCE FM stations from proposing transmitter sites within an affected station's 63 dBu contour. This would prevent interference areas deep within a station's service contour, and assure minimum distance separations between stations, thus promoting fair and equitable distribution of stations as required by Section 307(b) of the Communications Act. We seek comment on whether this NCE FM restriction is necessary to prevent a deluge of modification applications that would shift service away from less well served areas. All construction permits granted pursuant to these procedures would be conditioned on the simultaneous implementation of all related proposals. We invite comment on each aspect of this proposal.

22. To the extent that these procedures would result in the favorable consideration of applications that propose new areas of caused interference, they would also support changes in the way we treat interference received. New areas of received interference can result from a station's unilateral proposal to extend its own service contour so that it overlaps the interfering contour of an authorized station. In effect, such a proposal reflects a station's determination that increased potential listenership outweighs a certain amount of interference within its (expanded) service area. Typically, the new area of interference affects potential listeners who were not predicted to receive service previously. We seek comment on whether we should permit such modifications provided that an applicant demonstrates compliance with each of the requirements specified above. However, no consent from any other station would be required where the proposal would not result in interference occurring within the service contour of any reserved band station, any Section 73.215 station, or any station operating with the equivalent of maximum class facilities. However, applicants that propose a short-spacing to any other type of station would have to obtain consent from such affected stations to receive interference. If the affected station chooses not to increase power simultaneously to a full-class facility as part of the agreement with the applicant, the affected station must request reclassification as a Section 73.215 licensee/permittee. This "Section 73.215 condition" on the affected station's authorization would effectively limit that station to its current facilities (with regard to the applicant's proposal) and would prevent subsequent unilateral increases by the affected station resulting in interference caused to the applicant's improved facilities.

23. We seek comment on whether we should follow the methodology adopted in the recent grandfathered short-spaced FM station proceeding to determine areas of interference using the desired-to-undesired signal strength ratio analysis and the standard F(50,50) and F(50,10) propagation curves.³² As noted therein, contour overlap is an effective method for demonstrating that no interference would occur. In contrast, the ratio method is the most appropriate method for determining areas of interference. We seek comments on this view. Co-channel interference would be predicted to exist at all locations within the desired station's coverage contour where the undesired (interfering) F(50,10) field strength exceeds a value 20 dB below the desired (protected) F(50,50) field strength. First adjacent channel interference would be predicted to exist at all locations within the desired station's coverage contour where the undesired (interfering) F(50,10) field strength exceed a value 6 dB below the desired (protected) F(50,50) field strength. Second and third adjacent channel interference would be predicted to exist at all locations

³² *Grandfathered Short-Spaced FM Stations, Report and Order*, 12 FCC Rcd 11840 (1997).

within the desired station's coverage area where the undesired (interfering) F(50,10) field strength exceeds a value 40 dB above the desired (protected) F(50,50) field strength.³³ We invite comment on these standards and the use of this methodology.

24. We believe that consideration is warranted in this *Notice* of the standards that would apply to waiver requests of the interference rules proposed herein. The original Section 73.207 mileage separation rules were adopted as "the best means for achieving an orderly, efficient, and effective development of the commercial FM broadcast service."³⁴ The Commission has long held that "strict enforcement of the mileage separation rules is of paramount importance to the integrity of the entire FM assignment plan."³⁵ Therefore, Section 73.207 waiver proponents were required to make a "compelling showing." Specifically, an applicant for waiver of Section 73.207 was required to make a three-part threshold showing that (1) the present transmitter site was no longer suitable, (2) non-short-spaced sites were unavailable, and (3) the proposed new site was the least short-spaced site available.³⁶ In addition, an applicant had to demonstrate that grant of waiver would serve the public interest.³⁷ Section 73.215, which went into effect in 1989, specifies a procedure by which an applicant may obtain relief from our historic strict enforcement of the mileage separation requirements of Section 73.207.³⁸ Under Section 73.215, applicants need only demonstrate that no prohibited contour overlap (and hence interference) between short-spaced stations would be created, and that the short-spacing meets the less restrictive spacing requirements of Section 73.215(e).³⁹

25. Adoption of Section 73.215 allowed the Commission to discontinue granting waivers of Section 73.207.⁴⁰ In its place, some applicants have sought waivers of Section 73.215. Under the *WAIT Radio* doctrine, the Commission is bound to consider waiver requests.⁴¹ Unsurprisingly, waiver proponents

³³ See Discussion at Section III E. 1. proposing to change the FM and NCE FM translator station second-adjacent channel NCE FM interfering contour to 100 dBu.

³⁴ *Greater Media, Inc.*, 59 FCC 2d 796, 797 (1976); see *ECI License Company, L.P. (WYUU)*, 11 FCC Rcd 3545, 3546 (M.M.Bur) ("WYUU") (spacing rules "adopted in part to promote a fair distribution of FM service across the country, as required by 307(b) of the Communications Act, avoiding undue concentration of stations in urban areas (particularly major markets).") (citations omitted), *aff'd*, 106 F.3d 442 (D.C.Cir. 1996).

³⁵ *Boone Biblical College*, 19 FCC 2d 155, 156 (1969); see *WAIT Radio v. FCC*, 418 F.2d 1135, 1159 (D.C.Cir. 1969) ("applicant for waiver faces a high hurdle even at the starting gate.").

³⁶ *Stoner Broadcasting System, Inc.*, 49 FCC 2d 1011, 1012 (1974); *Townsend Broadcasting Corp.*, 62 FCC 2d 511, 512 (1976).

³⁷ *Townsend Broadcasting Corp.*, 62 FCC 2d at 511.

³⁸ 47 C.F.R. § 73.215; see *Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas, Report and Order* in MM Docket 87-121, 4 FCC Rcd 1681, 1682 (1989) ("Contour Protection Order"), *recon. granted in part and denied in part*, 6 FCC Rcd 5356 (1991).

³⁹ See *WYUU*, 11 FCC Rcd at 3546.

⁴⁰ See *Reconsideration Order*, 6 FCC Rcd at 5359-60.

⁴¹ See *WAIT Radio v. FCC*, 418 F.2d at 1159.

have sought to measure the magnitude of short spacing in accordance with the less restrictive distance minimums of Section 73.215. This approach is misguided. Section 73.215 codifies a relief mechanism for applicants to specify sub-standard spacings *provided that certain criteria are met*. If an applicant cannot meet these standards, then Section 73.207 requirements must control. In fact, the Commission's interest in adhering to Section 73.207 minimum distance separations is all the more compelling because Section 73.215 has given applicants additional site selection flexibility.⁴² We propose to continue to follow this same procedure with regard to any interference-related rule changes adopted pursuant to this *Notice*. Specifically, in analyzing such a request for waiver of Section 73.215(e), we propose to measure the short spacing in accordance with Section 73.207 and to apply the traditional threshold three-part and public interest tests developed in Section 73.207 jurisprudence.⁴³ Similarly, with regard to interference-creating proposals between or among consenting broadcasters, the Commission would consider prohibited overlap in accordance with established precedent.⁴⁴ In no event would such an applicant be entitled to a presumption that creating any interference -- much less five percent -- within any station's protected service contour would be in the public interest. We seek comment on these protected waiver policies.

26. A broadcaster's obligations to accurately prepare each facility application, to truthfully complete each application certification, to construct and operate facilities in accordance with its authorization, and, generally, to adhere to the Commission's technical rules become particularly significant where stations may create small amounts of interference and where several facility modifications may be mutually interdependent. Our experience is that the vast majority of FM facility proposals, both for new and existing stations, either meet the relevant interference criteria or seek the relevant rule waivers, and truthfully complete all certifications. Moreover, most stations are built in accordance with their construction permits. The Commission, however, has not hesitated to impose severe sanctions where a broadcaster intentionally engages in unauthorized station construction.⁴⁵ Moreover, the Commission retains the power to revoke any construction permit or license "because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application."⁴⁶ We are fully committed to exercising our plenary enforcement powers against applicants that enter into negotiated interference agreements where we find that application showings and/or

⁴² See *Reconsideration Order*, 6 FCC Rcd. at 5360.

⁴³ See *WYUU*, 11 FCC Rcd at 3546 n.4 (affirming explicit use of Section 73.207 separation standards for measuring extent of Section 73.215(e) short-spacing and affirming without comment staff application of Section 73.207 threshold test to Section 73.215(e) waiver request). To the extent that one staff decision suggests that Section 73.207 waiver standards are inapplicable to Section 73.215(e) waiver requests, that position is explicitly repudiated. See *WYUU*, 11 FCC Rcd at 1799.

⁴⁴ With regard to Section 73.215(a), the Commission acknowledged in the contour protection rulemaking that waiver of prohibited contour overlap may be appropriate in "a very small number of cases . . . to permit greater power in a short-spaced station's direction where it is demonstrated that such a facility is necessary to allow use of a multiplexed transmitting antenna and that its authorization would otherwise serve the public interest, for example, by allowing retention of existing service to an underserved area." *Reconsideration Order*, 6 FCC Rcd. at 5360 n. 27.

⁴⁵ *Chameleon Radio Corporation*, FCC 98-73 (released April 22, 1998) (affirming revocation of station license based on applicant misrepresentations and lack of candor regarding STA request, including misrepresentations regarding loss of authorized site and status of proposed tower as an existing structure).

⁴⁶ 47 U.S.C. § 312(a)(2).

certifications have fallen short of Commission standards, regardless of the time at which the application errors are brought to the Commission's attention. In the event we adopt negotiated interference procedures for FM stations, we propose to publish, as necessary, decisions that explain or clarify these new procedures. We believe that a program that combines strict enforcement and broad information dissemination would promote full and candid disclosure of material technical information in applications and compliance with our rules and policies. We seek comment on this enforcement approach for negotiated interference agreements. We also request that commenters identify specific enforcement procedures that the Commission should follow and the sort of sanctions that it should impose where an applicant provides false or incomplete information in its application or where construction is at variance to an authorization.

27. We seek comment on whether this proposal to permit small amounts of interference in limited circumstances would protect service to a station's community of license and would help preserve an adequate service floor for all listeners. It would be particularly responsive to those situations where factors such as unusual terrain create anomalous service contours that block meaningful service expansions. It would give greater weight to the willingness of a station to accept interference within its protected service contour and would constitute a significant change in our technical regulation of FM broadcast stations. In particular, we invite public comment on the following issues to help develop a better record on the technical and policy issues that these proposals raise.

- o Would these negotiated interference procedures sufficiently protect the interests of listeners and licensees not party to an agreement?
- o Could this proposal result in service losses to smaller communities and/or less desirable demographic audiences?
- o Should negotiated interference agreements between commercial stations be treated differently from agreements between noncommercial educational stations?
- o How might this proposal affect the development and implementation of in-band on-channel (IBOC) digital radio systems?
- o Is there a danger that negotiated interference agreements over time may lead to less flexibility to make future changes when, for example, a transmitter site is lost and a station must relocate?
- o Is there reason to believe that the accumulation of negotiated interference agreements over a period of years could lead to a general degradation of FM service in the United States?
- o Is this negotiated interference proposal consistent with Section 307(b) of the Communications Act?
- o To what extent should the Commission rely on applicant certifications to ensure compliance with negotiated interference agreement requirements?
- o Should the Commission require licensees to maintain negotiated interference agreements in their local public inspection files? Should they be filed with the Commission?
- o Should the Commission limit agreements to one or several license terms? Should an agreement be terminable following the transfer of a station that previously consented to interference within its service contour?

o What remedies should the Commission and affected licensees have if a station breaches its negotiated interference agreement?

III. Other Proposals to Give Stations Greater Technical Flexibility

A. Introduction

28. In this section we propose certain rule and policy changes to expand opportunities for enhanced service and reduce regulatory burdens on applicants. We believe these proposals are consistent with our current efforts to streamline our existing rules and eliminate unnecessary or redundant procedural requirements.

B. The Point-To-Point Prediction Methodology

29. *Background.* Interference between FM stations is defined in terms of protected and interfering contours.⁴⁷ Contour protection has generally worked well in fostering interference-free service in the FM band. However, it is not perfect. Because of the limited length (3 to 16 kilometers) of the radials used to determine antenna height above average terrain, the Commission's standard propagation methodology does not accurately account for all terrain effects. For example, our standard contour methodology, which is used to calculate both interfering and protected contours, would not take into account a mountain at 25 kilometers from a transmitter site, and thus, would incorrectly predict service (or interference) to areas well beyond this mountain. In 1975, the Commission adopted a limited correction factor to measure "terrain roughness" to overcome the effects of terrain beyond 16 kilometers. This methodology required an analysis of terrain data along the radial(s) of interest, at distances between 6 and 31 miles (10 to 50 kilometers) from the transmitter site.⁴⁸ However, the Commission later stayed the general use of the terrain roughness factor (contained in 47 C.F.R. § 73.313 (f) through (j) and Figures 4 and 5 of 47 C.F.R. § 73.333) because of difficulties with "atypical terrain configurations."⁴⁹

30. Presently, the Commission does not accept supplemental terrain analyses to determine predicted interference between FM stations. This prohibition has its roots in the concept that applications with such showings are inherently more complicated, and the results more open to interpretation, than results obtained in accordance with the standard contour prediction method in Section 73.313. In addition, the input parameters to many alternative methods have not been standardized and their selection may be a source of dispute, even where the same prediction method is used. Such complications, multiplied over a significant number of applications, could have an adverse impact on our ability to take prompt action on the applications that come before us.⁵⁰ Thus, applications proposing new or expanded service may be unreasonably precluded where interference is predicted although, in fact, unlikely.

⁴⁷ These concepts also form the basis for our minimum separation requirements in 47 C.F.R. § 73.207.

⁴⁸ *Field Strength Curves, Report and Order*, Dockets 16004 and 18052, 53 FCC 2d 855, 863 (1975).

⁴⁹ *Temporary Suspension of Certain Portions of Sections 73.313, 73.333, 73.684, and 73.699*, FCC 75-1226, 56 FCC 2d 749(1975), *stay extended indefinitely*, 40 Rad. Reg. 2d 965 (1977).

⁵⁰ We have accepted supplemental showings aimed at demonstrating compliance with the city coverage requirement in 47 C.F.R. § 73.315 and the main studio requirement in 47 C.F.R. § 73.1125, since there can be no interference created to other stations by such use. See *Certain Minor Changes in Broadcast facilities Without a Construction Permit, Report and Order*, MM Docket 96-58, 12 FCC Rcd 12371 at 12401-03.

31. *Discussion.* In Appendix B we set forth a supplemental point-to-point ("PTP") prediction model designed for the purpose of providing a more accurate prediction of interfering contours. It combines a procedure for characterizing terrain obstructions with a well-accepted model of radio wave diffraction. Unlike the standard prediction method, it takes into account terrain beyond 16 kilometers from the transmitting antenna and would provide certain stations with greater flexibility in locating facilities and obtaining desired power levels. Accordingly, we propose that an applicant may use the PTP method to calculate interfering contours for the purpose of demonstrating compliance with the Commission's various overlap/interference requirements.⁵¹ Such showings would be limited to the relationships between the PTP predicted interfering contours and the affected station's standard F(50,50) curve predicted protected service contour. We also propose to permit the use of PTP methodology to demonstrate compliance with the interference area and population limits set forth above for negotiated interference agreements.

32. We tentatively conclude that applicants should be permitted to use the PTP methodology for certain other purposes. All commercial FM stations must demonstrate compliance with the community of license city grade coverage requirements of Section 73.315. This requires (1) a predicted 3.16 mV/m contour that encompasses the community of license; and (2) the lack of major terrain obstructions between the transmitter site and the community. Since the PTP methodology more accurately incorporates the effects of terrain into the prediction of coverage, we propose to permit the use of PTP calculations by both applicants and objectors to resolve any questions raised regarding compliance with § 73.315 and to treat the PTP calculations as controlling. We propose to require applicants to submit a PTP contour study where terrain between a transmitter site and a community of license could put in issue either the use of the standard methodology or the station's compliance with city grade coverage requirements. Existing stations that currently cover their community based on the standard prediction method, but fail to satisfy the PTP methodology, would be exempt from a PTP determination provided they do not propose to relocate transmission facilities or withdraw coverage towards the community of license. Additionally, we propose to allow PTP methodology in two specific instances that require the calculation of 3.16 mV/m coverage: compliance with main studio requirements of § 73.1125⁵² and demonstration that an allotment, when considered at maximum Class facilities, would comply with Section 73.315 with respect to the community of license (if use of a supplemental method is warranted consistent with existing precedents).⁵³ We seek comment on these proposals.

⁵¹ Specifically, we refer to interfering contours calculated in association with the Commission's overlap requirements for FM commercial, NCE FM, and FM Translator stations (47 C.F.R. §§ 73.215, 73.509, 73.1204, respectively); overlap of the interfering contours of intermediate frequency (IF) grandfathered short-spaced stations (Section 73.213(b)); and the interfering contours utilized in showings that involve undesired- to-desired (U/D) signal ratios in conjunction with FM to TV Channel Six interference showings (Section 73.525) and public interest showings related to pre-1964 grandfathered short-spaced stations (Section 73.213(a)).

⁵² The staff currently entertains alternate prediction methods in the context of main studio locations. However, in order to warrant study, current commercial FM processing policy requires that such showings may be submitted if they alter the 3.16 mV/m contour by at least ten percent when compared to the standard prediction method. In contrast, the staff can efficiently confirm that an applicant has properly used the PTP methodology. Accordingly, we propose to eliminate the ten percent method for PTP contour studies that establish compliance with the Commission's main studio location rule.

⁵³ See, e.g., *Woodstock, VA*, 3 FCC Rcd 6398 (1988); *Cresswell, OR*, 4 FCC Rcd 7040 (M.M. Bur. 1989); and *Kings Beach, CA* 6 FCC Rcd 4375 (M. M. Bur. 1991).

33. The PTP methodology is proposed in this *Notice* for the primary purpose of demonstrating that the standard prediction method *overstates* the area encompassed by a station's interfering contour. Thus, we propose to prohibit the use of the PTP methodology to extend interfering contours beyond the standard F(50,10) predicted curves for the purpose of demonstrating harmful interference received. Allowing this use of the PTP to extend protection rights, which is specific to a particular site, would in some instances effectively provide stations with greater protection from interference than that provided by fully-spaced stations because the minimum distance separations are based upon the standard prediction curves. PTP showings are not permitted in any of our international agreements and thus could not be used to demonstrate compliance with international requirements. We also propose not to permit the use of this methodology to calculate protected service contours for the purposes of demonstrating: the lack or existence of overlap; or compliance or non-compliance with contour limitations for boosters, fill-in translators, or auxiliary facilities.

34. We also propose not to consider PTP showings in the context of demonstrating compliance with the multiple ownership requirements of Section 73.3555. In instances involving the major radio markets, multiple ownership studies often involve dozens of stations. Selective application of the PTP method to some, but not all stations in a relevant market would invite disputes where contradictory results could occur. Conversely, in light of the sometimes radical differences between PTP calculations and standard predicted contours, utilizing the PTP method for all stations could affect these ownership studies in ways not anticipated when the current multiple ownership rules were adopted. We believe that, in most instances, the use of the PTP methodology could significantly alter the definition of stations included in a particular market and use of this methodology in this context would serve no useful function in administering our ownership policies. Accordingly, we propose not to accept such studies to determine whether an application complies with our ownership rules and policies. We seek comments on each aspect of this proposal regarding the adoption and use of the PTP methodology.

35. As noted above, we stayed the terrain roughness provision because of difficulties with atypical terrain configuration. We believe that the PTP methodology overcomes these difficulties and would provide a more sophisticated and not unduly burdensome method of assessing the effects of a variety of terrain anomalies. Therefore, we propose to delete the long-stayed terrain roughness provisions from 47 C.F.R. § 73.313(f) through (j) and Figure 4 of 47 C.F.R. § 73.333 from the Commission's Rules as they apply to the FM broadcast stations. We seek comment on these proposals.⁵⁴

C. Commercial FM Technical Requirements: Amendments to Section 73.215

1. Reduced Minimum Separation Requirements in Section 73.215(e) for Second- and Third-Adjacent Channel Stations

36. *Background.* Section 73.207 sets forth the minimum distance separation requirements for FM stations operating on co- and adjacent channels in the non-reserved band and on intermediate frequency (IF) channels. The spacing table in Section 73.207 was adopted in part to ensure interference-free FM service within each commercial station's protected service contour. Applicants that proposed short-spaced transmitter sites were required to demonstrate that (1) the present site was no longer suitable;⁵⁵ (2)

⁵⁴ See Amendment of Sections 73.333 and 73.699, *Field Strength Curves and For Fm and TV Broadcast Stations; Amendment of Part 73 of the Rules Regarding Field Strength Measurements for FM and TV Broadcast Stations*, Dockets 16004 and 18052, 53 FCC 2d 855, 863 (1975).

⁵⁵ See, e.g., *John Lamar Hill*, 70 FCC 2d 153 (Rev. Bd. 1978).

alternative fully-spaced sites were unavailable;⁵⁶ (3) the proposed transmitter site was the least short-spaced site available; and (4) grant of the Section 73.207 waiver would serve the public interest.⁵⁷ However, the preparation and processing of requests for waiver of Section 73.207 proved to be increasingly burdensome and time consuming for applicants and the staff. In 1989, the Commission adopted Section 73.215 to afford FM applicants some additional flexibility in locating potential transmitter sites.⁵⁸ Applications processed under Section 73.215 must demonstrate that the proposed facilities would not create prohibited overlap to any station that does not satisfy Section 73.207 minimums. In response to concerns of spectrum overcrowding, the Commission retained minimum but lesser spacing requirements for Section 73.215 applicants. See 47 C.F.R. § 73.215(e).⁵⁹ For second- and third-adjacent channel stations, the contour protection rule generally limits the amount of relief from Section 73.207 spacing requirements to no more than three kilometers and in some cases provides no relief.⁶⁰ As a result, stations with second- and third-adjacent channel spacing problems have, in many cases, less flexibility to relocate facilities than under the former Section 73.207 waiver policies that permitted the staff to grant spacing waivers of up to six kilometers.⁶¹ Consequently, the staff has received numerous inquiries concerning the possibility of waivers of Section 73.215(e) for second- and third-adjacent channel stations.

37. *Discussion.* We propose to revise the Section 73.215(e) spacing table to afford all FM commercial stations a minimum of 6 kilometers of relief from the applicable Section 73.207(a) standards. We believe that this change would significantly increase certain licensees' flexibility to identify sites that provide sufficient spacing to second- and third-adjacent channel stations. We propose no change in the contour overlap methodology and requirements of Sections 73.215(a), (b), and (d). We also propose that grants under this proposal would continue to be listed as a contour protection construction permit. We seek comment on these proposals.

2. Additional Flexibility for Stations in Puerto Rico and the U.S. Virgin Islands

38. *Background.* For many years commercial FM stations with Class A, B1 and B allotments in Puerto Rico and the Virgin Islands have been permitted to operate with greater facilities than those

⁵⁶ See, e.g., *Carroll-Harrison Broadcasting, Inc.*, 62 FCC 2d 45 (1976).

⁵⁷ See, e.g., *On the Beach Broadcasting*, 8 FCC Rcd 3123 (1993).

⁵⁸ See 47 C.F.R. § 73.215.

⁵⁹ This Section 73.215(e) table utilized the Section 73.207 required separation for the next lower class of station as the minimum spacing under which a station could qualify for use of the contour protection rule.

⁶⁰ Specifically, out of 28 possible combinations between the second- and third-adjacent channel stations, Section 73.215 provides 10 km relief to Class B1 - C stations, and 9 km relief to Class C2-C stations. In addition, four combinations have 3 km of relief, 14 combinations have 2 km of relief, five combinations have 1 km of relief, and three combinations have no relief.

⁶¹ In addition to the limited relief for second and third-adjacent stations, instances in which there is spacing of 6 km or less include Class B stations which employ contour protection under Section 73.215 with respect to cochannel Class C stations, and conversely Class C to Class B stations. Section 73.215 allows these stations to be no more than 4 km closer than the Section 73.207 required separation.

permitted for their counterparts in the United States and its territories.⁶² On the mainland, the spacing rules in 47 C.F.R. § 73.207 are designed so that two stations operating with maximum class at minimum separation will not cause interference within either station's protected service contour.⁶³ In Puerto Rico and the Virgin Islands, the protected and interfering contours extend further and often overlap because of the greater antenna heights permitted for these stations. This exception was initiated by the Commission in 1964 to help these stations overcome the effects of rugged island topography and to promote the distribution of radio facilities in these areas. Although these stations may operate with transmission facilities in excess of class height and power maximums, assignments need only meet Section 73.207 spacing requirements. Accordingly, it is possible for two stations to comply with Section 73.207 but have prohibited overlap under Section 73.215. The Commission recognized that as a result of these factors, Section 73.215 would provide less relief to Virgin Island and Puerto Rican stations than to those stations limited to class height and power maximums. To address this matter, in 1991 the Commission adopted Section 73.215(a)(4) which permits stations in Puerto Rico and the Virgin Islands to make an alternative showing that the 1 mV/m contour from the proposed short spaced site would not extend past the present 1 mV/m location. However, stations in Puerto Rico and the Virgin Islands seeking preferred site changes often find it impossible to comply with this contour requirement, especially where the move is from a low coastal location to higher inland locations. Consequently, in certain instances, Section 73.215(a)(4) provides no relief.

39. *Discussion.* In 1993 the staff granted a request for waiver of Section 73.215(a)(1) to permit an alternate method to define the protected and interfering contours of certain stations in the Virgin Islands and Puerto Rico.⁶⁴ We propose revising Section 73.215 to incorporate the actual protected and interfering contours for Class A, B1 and B stations set forth in *St. Croix Wireless Co.*⁶⁵ The proposed modifications take into account the higher HAAT limits specified in the rules for Puerto Rico and the Virgin Islands, while affording stations additional site location flexibility. We believe this revision would protect other stations from interference in excess of that which may occur under our spacing rules. We seek comment on this proposal.

⁶² See *Revision of FM Broadcast Rules*, 40 FCC 868 (1964) (addressing Class B stations in Puerto Rico and the Virgin Islands, respectively); *Amendment of Section 73.211(b)(3) of the Rules Concerning maximum power and antenna height for FM Broadcast Stations*, 13 Rad. Reg. 1536 (1968) (Class A stations in Puerto Rico and the Virgin Islands) and *Permitting Increased Antenna Height of Class B1 Commercial FM Broadcast stations in Puerto Rico and the Virgin Islands*, 49 Fed. Reg. 22088 (May 25, 1984).

⁶³ For Class B stations, 54 dBu, for Class B1 stations 57 dBu, and for all other classes, 60 dBu.

⁶⁴ See *St. Croix Wireless Co., Inc.*, 8 FCC Rcd 7329 (1993). In *St. Croix Wireless Co.*, the permittee requested a waiver of Section 73.215 as it defined the protected contour of a Class B station as the 54 dBu contour. The permittee demonstrated that use of the 54 dBu contour for Class B stations in Puerto Rico and the Virgin Islands produced an anomalous result, affording vastly more protection than the spacings provide. Instead, the permittee showed that given the spacings and maximum facilities permitted in this region, the normally protected contour of such stations is the 63 dBu contour, and the use of this contour for Caribbean stations produces a result equivalent to that on the mainland.

⁶⁵ *Id.* at 7331. The actual protected and interfering contours under 47 C.F.R. § 73.207 in Puerto Rico and the U.S. Virgin Islands are set forth in Appendix C.

D. New Class C Height Above Average Terrain Requirements

40. *Background.* In 1983, the Commission made a number of changes to the FM allotment scheme, including establishment of three intermediate classes of stations: B1, C1 and C2.⁶⁶ Existing Class B and C stations were required to meet minimum facility requirements within three years or be reclassified to an intermediate station class based on their actual operating facilities.⁶⁷ The Commission's purpose in adding the station classes was to minimize overprotection of stations and thereby increase the availability of FM station assignments:

[A] significant number of Class B and C stations were operating with facilities that were substantially below those permitted by the rules. Nevertheless, the Commission's spacing requirements protected those stations to the same extent as a full facility licensee. The result of protecting all Class B and C stations at the maximum facility level was the preclusion of new, otherwise permissible services.⁶⁸

41. For Class C stations, the Commission adopted a 100 kW power requirement and minimum antenna height requirement of 300 meters height above average terrain ("HAAT"), one-half the existing maximum antenna height limitation for Class C stations of 600 meters.⁶⁹ Following the three-year transition period, Class C stations that did not meet the required minimum values were reclassified as Class C1 or C2 stations. Thus, Class C stations presently operate with antennas between 300 and 600 meters HAAT.⁷⁰

42. A recent staff study reveals that many Class C stations continue to operate with facilities that are significantly less than maximum. Specifically, the study reveals that 519 of the 863 FM stations presently occupying Class C assignments, or approximately 60 percent, operate with facilities less than 450 meters HAAT. The fact that such a large percentage of Class C stations are operating more than 150 meters below the maximum antenna height limitation of 600 meters HAAT indicates that the Commission's present allotment structure overprotects a substantial number of Class C stations and, therefore, may unnecessarily preclude proposals to introduce new and/or expand existing services.⁷¹

⁶⁶ *Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments, Report and Order* in BC Docket 80-90, 94 FCC 2d 152, 155-56 (1983) ("*Docket 80-90 R&O*"), modified, *Memorandum Opinion and Order*, 97 FCC 2d 279 (1984) ("*Docket 80-90 MO&O*").

⁶⁷ *Docket 80-90 R&O*, 94 FCC 2d at 156.

⁶⁸ *Docket 80-90 MO&O*, 97 FCC 2d at 281; see *Notice of Proposed Rule Making* in BC Docket 80-90, 78 FCC 2d 1235, 1240-41 (1980) ("*Docket 80-90 Notice*").

⁶⁹ *Docket 80-90 R&O*, 94 FCC 2d at 183-84. Only Class C stations have a minimum HAAT requirement to exceed the next lower class (Class C1) maximum of 300 meters. *Id.*

⁷⁰ *Id.*; see 47 C.F.R. § 73.211

⁷¹ See *Docket 80-90 Notice*, 78 FCC 2d at 1241 ("The separation requirements are based upon the assumption that each assigned station is, or at some time in the future will be, operating at the maximum power and antenna height for its particular class.").

43. *Discussion.* We propose to create an additional intermediate class of stations between Class C and Class C1, to be designated Class C0 (Class C zero). Class C0 stations would have a maximum height limitation of 450 meters HAAT and a minimum antenna height requirement of 300 meters HAAT. Both classes of stations would be required to maintain a power level of 100 kw, the present value for Class C stations. Under this proposal, Class C stations would be required to operate at a minimum antenna height of no less than 451 meters HAAT. We would amend the FM distance separation tables to include the reduced spacing requirements for the new station class.⁷² In order to provide a reasonable opportunity for existing Class C stations not operating at the proposed antenna height minimum to maintain their full Class C status, we propose a three-year transition period to obtain a construction permit specifying an antenna HAAT of at least 451 meters. During the three-year period, each such station would be renewed on a conditional basis. If the station has not obtained the necessary authorization within the three-year period, then the station would be reclassified as a Class C0 station.

44. We believe that these changes would increase the efficiency of FM broadcast band licensing while permitting existing Class C stations to provide service equivalent to that embodied in the present allotment rules. We seek comments regarding this proposal, including comments that may shed light on the additional service the proposed additional station class could create, the effect of the loss of primary service areas for reclassified Class C0 stations, and whether creation of a temporary "buffer zone" to protect the ability of existing Class C stations to upgrade during the three-year transition period would be appropriate.⁷³

E. Streamlined Application Processing Changes

1. Introduction.

45. In this section, we propose a number of application processing changes that we believe would eliminate unnecessary administrative burdens and shorten processing time frames for certain applications. As discussed in detail below, we propose to extend our first come/first served procedures to AM, NCE FM and FM translator minor change applications. We also propose to expand the definition of "minor change" for the AM, NCE FM and FM translator services to conform to the commercial FM minor change definition. Furthermore, we propose to replace the current two-step application process for coordinate corrections and FM translator power reductions with single-step application procedures.

2. Extending First Come/First Served Processing to AM, NCE FM and FM Translator Minor Change Applications

46. *Background.* Under our present rules, minor change applications for non-reserved FM band broadcast stations are subject to "first come/first served" processing, whereby a first-filed application

⁷² See 47 U.S.C. §§ 73.207, 73.213, 73.215, 73.507. A preliminary staff analysis of the proposed Class C0 category has determined that co-channel spacing requirements would be reduced from Class C minimum distances by approximately 11 kilometers and first-adjacent channel spacing requirements by between 12 and 21 kilometers.

⁷³ See Docket 80-90 MO&O, 97 FCC 2d at 285 (adopting "16 kilometer buffer, in addition to the normal distance separation requirements, to existing Class C stations currently operating with an HAAT of less than 300 meters.").

cuts off the filing rights of subsequent, mutually exclusive proposals.⁷⁴ Minor changes for AM, reserved FM band and FM translator stations do not receive such cut-off protection, but remain subject to competing proposals until the staff disposes of the applications.⁷⁵ This policy imposes significant uncertainty and delay on minor change applicants in these services: at any time during the pendency of an application, a conflicting proposal may be filed that could halt further processing of the application and necessitate a technical amendment, settlement between the parties or designation of the mutually exclusive applications for comparative hearing.⁷⁶ The uncertainty persists through the entire application process. The prospect of expending significant resources to prosecute an application without any certainty of grant may substantially deter applicants from seeking to improve service.

47. *Discussion.* We propose to extend application of the first come/first served processing system to AM, NCE FM and FM translator minor change applications. We believe that the unlimited exposure to conflicting applications and the concomitant expense and delay under the current policy is both inequitable and inconsistent with our treatment of minor changes for FM commercial band stations. We anticipate that this proposal would effectively remedy the uncertainty and delay presently associated with AM, NCE FM and FM translator minor change applications.⁷⁷ We also believe that cut-off protection would serve the public interest by encouraging potential applicants to file for enhanced facilities while minimizing the resources expended by the Commission and applicants in resolving conflicts between minor change applications. We are mindful that adoption of this proposal may restrict the ability of other parties to file competing proposals that would be precluded by grant of the first-filed application. We believe that the certainty and protection from delay that the proposed procedures would provide are sufficient to offset the lessened opportunity for the filing of competing applications. We invite comment on this proposal.

3. Revisions to the Definition of "Minor" Change in AM, NCE FM, and FM Translator Services

48. *Background.* Under our present rules, a proposed change in the facilities of an existing commercial FM band station is classified as a major change only if it involves a change in community

⁷⁴ 47 C.F.R. § 73.3573(g)(3); see *Amendment of Sections 73.3572 and 73.3573 Relating to Processing of FM and TV Broadcast Applications, Report and Order* in MM Docket 84-750, 50 Fed. Reg. 19936, 19941-42, *recon. den.*, 50 Fed. Reg. 43157 (1985); see also *Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application, Report and Order* in MM Docket 92-159, 8 FCC Rcd 4735, 4738-39 (1993) (minor change applications protected against subsequently-filed, conflicting rulemaking petitions).

⁷⁵ See 47 C.F.R. §§ 73.3571 (Processing of AM broadcast station applications), 73.3573 (NCE FM), and 74.1233 (FM translator).

⁷⁶ See *Auction NPRM*, 12 FCC Rcd 22363, 22364-67 (1997), regarding delays in resolving comparative broadcast proceedings. The Commission asked for comment in the *Auction NPRM* on whether conflicting major and minor modification applications should be treated as subject to auctions under Section 309(j) of the Communications Act. See *Auction NPRM*, 12 FCC Rcd at 22382.

⁷⁷ See *Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments, Report and Order* in MM Docket No. 91-348, 7 FCC Rcd 4917, 4919 (1992) (cut-off procedures in rulemaking petition and commercial FM band application proceedings "have proven effective in providing certainty to parties and avoiding unnecessary delays in processing").

of license and/or certain changes in frequency and/or class.⁷⁸ For AM, NCE FM and FM translator stations, however, various other facility changes also are classified as major changes: (1) for AM stations, most proposed increases in power;⁷⁹ (2) for NCE FM stations, any proposed change of 50 percent or more in the station's predicted 1 mV/m (60 dBu) coverage area;⁸⁰ and (3) for FM translators, any proposed change or increase of over 10 percent in the 1 mV/m coverage area.⁸¹ Accordingly, facility modification applications in these services may be subject to additional administrative procedures. These include the statutory requirements that the Commission provide a thirty-day public notice period following the acceptance of a major change application and the opportunity to file petitions to deny and competing applications within the thirty-day period.⁸²

49. We perceive no compelling reason to impose these burdens and delays on proposals that are fundamentally technical and minor in nature. Staff review for major and minor change applications is essentially the same, and is primarily an engineering function.⁸³ If the Commission decides to expand the definition of "minor change" as proposed in this *Notice*, it would continue to provide public notice of the tendering of the applications and the public would continue to have an opportunity to file informal objections and seek reconsideration of staff actions.⁸⁴ We believe that these procedures provide adequate safeguards for public participation. We are aware that such treatment, as set forth more fully below, together with our above-stated proposal to provide cut-off protection for minor change applications, would enable AM, NCE FM and FM translator stations to make certain facility changes without being subject to competing applications.⁸⁵ We do not believe, however, that other prospective applicants would be

⁷⁸ 47 C.F.R. § 73.3573(a)(1) classifies certain class and channel changes as minor. These include proposals filed by licensees and permittees for a higher or lower class allotment on a co- or adjacent channel or on an intermediate frequency.

⁷⁹ *Id.* at § 73.3571(a)(1). The rule establishes an exception where the station's radiation levels in all directions remain the same due to a reduction of antenna efficiency. *Id.* Changes in hours of operation also are classified as major changes for AM stations due to the complex propagation characteristics of AM signals. *Id.* Finally, a Class D station proposing a night-time power increase up to 250 watts (141 mV/m at 1 kilometer equivalent) is treated as a minor change. *Id.*

⁸⁰ *Id.* at 73.3573(a)(1). This standard formerly was applied to commercial FM band stations as well. See *Matter of Revision of Sections 73.3571, 73.3572 and 73.3573 of the Commission's Rules, First Report and Order* in MM Docket 83-1377, 56 RR 2d 941, 943 (1984).

⁸¹ *Id.* at § 74.1233.

⁸² See 47 U.S.C. § 309(b); 47 C.F.R. §§ 73.3573(e), 73.3580.

⁸³ See *First Report and Order*, 56 RR 2d at 943.

⁸⁴ 47 U.S.C. § 405; 47 C.F.R. §§ 1.106, 73.3564, 73.3587; see *First Report and Order*, 56 Rad. Reg. 2d at 943-44 (employing similar analysis in classifying commercial FM band station facilities increases as minor changes).

⁸⁵ See, e.g., *Report and Order*, 8 FCC Rcd at 4738 (acknowledging that adopting cut-off protection for minor change applications could foreclose prospective petitioners' opportunities to request modifications); *Amendment of Part 74 of the Commission's Rules Concerning Translator Stations, Report and Order* in MM Docket 88-140, 5 FCC Rcd 7212, 7224 (1990) (rejecting suggestions that changes in FM translator coverage areas greater than 10 percent be classified as minor changes based on concern over enabling translators to increase coverage significantly without being subject to competing applications).

unfairly prejudiced by this policy because prospective applicants have the ability to predict whether other area stations have the potential to seek facilities increases based on applicable contour protection requirements and to file first for enhanced facilities.⁸⁶ Thus, the process would be designed to favor the party that is most prompt in submitting its request to the Commission. Furthermore, regardless of whether classified as a major or a minor change, the potential preclusive impact of a proposed facilities increase in the AM, NCE FM or FM translator service is necessarily limited by applicable contour protection requirements.

50. Accordingly, we propose to expand the definition of minor change for the AM, NCE FM and FM translator services to conform to the commercial FM "minor change" definition. Thus, only applications to change community of license and to change to a non-mutually exclusive channel and class would be classified as "major" changes.⁸⁷ To prevent NCE FM and FM translator stations from abandoning their present service areas, however, we propose to require these stations to continue to provide 1 mV/m service to some portion of their presently authorized 1 mV/m service areas in order for their applications to be classified as minor changes.⁸⁸ We tentatively conclude that this proposal would eliminate the present inconsistent treatment of proposed facilities increases for different radio services without undermining the administration of any Commission rule or policy. In addition, we anticipate that this proposal would expedite the application process for certain applications and, thus, speed the introduction of improved service to the public. We invite comment on this proposal.

4. Coordinate Corrections by Single Application for Licensed Stations

51. *Background.* Presently, broadcast stations seeking to correct coordinates must file a construction permit application, and after grant, a license application.⁸⁹ Coordinate corrections, however, are generally considered to be minor changes to broadcast facilities because they do not involve physical changes to the facilities or a change in licensed parameters. It has been our experience that minor coordinate corrections do not cause conflicts with other stations. Accordingly, we believe that for many coordinate corrections the two-application procedure is unduly burdensome. We also believe that eliminating the separate license application requirement will reduce the burden on applicants as well as the Commission, and reduce the time necessary to license the coordinate correction.

52. *Discussion.* We propose to adopt new provisions in Parts 73 and 74 to allow corrections of coordinates for broadcast facilities, where no other licensed parameters are changed, via a single license application. We also propose to require the applicant to certify that all licensed parameters not altered

⁸⁶ See 47 C.F.R. §§ 73.37(a) (AM daytime contour protection requirements); 73.182(q) (AM nighttime contour protection requirements); 73.509 (NCE FM stations must protect 1 mV/m contour of NCE FM stations); 74.1204 (FM translators must protect primary service contours of existing FM and FM translator stations); *see also Report and Order*, 8 FCC Rcd at 4738 (employing similar reasoning in adopting cut-off protection for minor change applications against rulemaking petitions)

⁸⁷ We propose to continue to treat AM applications to change from Class B to Class D as "minor" changes.

⁸⁸ Commercial FM and AM stations presently are required to maintain 3.16 mV/m and 5 mV/m contours, respectively, over their communities of license. See 47 C.F.R. §§ 73.24(i), 73.315(a).

⁸⁹ See 47 C.F.R. §§ 73.1690(b)(2) and 73.3536. Applications for construction permits must be filed on FCC Form 301 for commercial stations, Form 340 for noncommercial educational stations and Form 349 for FM translator and booster stations. License applications are filed on FCC Form 302 or 350 as appropriate

in the license application would remain unchanged. Under our proposal, the applicant would not be required to file a separate construction permit. We propose to make this procedure available where the correction would be less than 3 seconds latitude and 3 seconds longitude, provided that the applicant has sought FAA clearance and antenna structure registration.⁹⁰ We seek comment on this proposal and whether an alternative standard should be adopted. We also propose to continue our policy of issuing public notices announcing the receipt of the application, and the processing of the coordinate correction as if it were a routine minor change application. However, in the event the coordinate correction establishes a violation of our technical rules, the Commission would retain a full range of options including the designation of the license application for hearing⁹¹ and the issuance of an order to show cause why the construction permit should not be revoked.⁹² We propose to require any permittee that discovers an antenna structure coordinate error to file an application to modify its outstanding construction permit. We tentatively conclude that the Commission may adopt this change in licensing procedures pursuant to Section 319(d) of the Communications Act.⁹³ We believe that this process would permit full staff review and a meaningful opportunity to file informal objections. We seek comment on these proposals.

5. FM Translator and Booster Station Power Reductions by Single Application

53. *Background.* Currently, FM translator and booster station licensees seeking to decrease power must comply with a two-step application process. First, an application must be filed requesting a construction permit authorizing the proposed decrease in effective radiated power (ERP).⁹⁴ Second, prior to commencing operations, a license application must be filed for a license for the modified facilities.⁹⁵ See 47 U.S.C. § 319(d). We have found, however, when reviewing license renewals that many FM translator and booster stations are actually operating at a power less than that specified in their license. In order to authorize the reduced power operation, we now require licensees to go through the two-step process. In addition, FM translator licensees may resolve an interference complaint by a reduction in power. In this instance, the two-step process delays the resolution of the interference problem.

⁹⁰ In 1996, the Commission received comments in response to the *Notice of Proposed Rulemaking* in MM Docket 96-58 requesting that a rule be adopted to allow a coordinate correction in a modification of license application, thereby eliminating the requirement for a construction permit. See *Certain Minor Changes in Broadcast Facilities Without a Construction Permit, Notice of Proposed Rulemaking*, 11 FCC Rcd 8800 (1996). The Commission denied the request stating that the proposed one-step procedure could invite abuse by applicants "correcting" coordinates to a short-spaced transmitter site or a site involving prohibited contour overlap. By retaining the construction permit process, the Commission indicated that the safeguards against abuse inherent in the construction permit process would be not be lost. See *Certain Minor Changes in Broadcast Facilities without a Construction Permit, Report and Order*, 12 FCC Rcd 12371 (1997). We now believe that limiting one-step license application coordinate corrections to situations involving less than 3 seconds of longitude and latitude would provide adequate safeguards. We seek comment on this tentative conclusion.

⁹¹ See 47 U.S.C. § 319(c).

⁹² See 47 U.S.C. §§ 312(a)(2), 319(c).

⁹³ See *Telecommunications Act of 1996*, Pub. L. No. 104-104, § 403(m), 110 Stat. 56 (1996).

⁹⁴ FCC Form 349.

⁹⁵ FCC Form 350.